

**REMARKS****Claim Rejections Under 35 U.S.C. § 102**

Claim 29 was rejected under 35 U.S.C. § 102(b) as being anticipated by Dennison (U.S. Patent No. 5,362,666). Applicant traverses this rejection. The claim was allowed over Dennison '666 and another reference in a previous office action. In the Office Action mailed November 5, 2003, in rejecting claim 29 under 35 U.S.C. § 103, the Examiner admitted that "Dennison (5362666) fails to specify that the etch stop layer is function as a mask." Nothing has changed since that admission. Applicant successfully showed that even Dennison '666 in view of another cited reference (Baklanov et al.) was not sufficient to maintain a rejection, and claim 29 was allowed over Dennison and Baklanov et al. Now, after a Request for Continued Examination, claim 29 is inexplicably rejected on the same art that is admitted by the Examiner to not contain each and every element of the claim. and in fact, has been allowed over already. In fact, in the 5 previous Office Actions in this application, plus two Advisory Actions, claim 29 in any form has never to Applicant's knowledge been rejected under 35 U.S.C. § 102. It is not properly rejected now.

Applicant has fully, clearly, and repeatedly overcome the various rejections that have been asserted in this application no less than five times. Previously, sometimes the rejections were new, and sometimes they were modified. Never before this Office Action, however, have allowed claims been re-rejected, without any different rejection than that which was previously overcome. The Office and the Examiner have admitted that Dennison '666 does not teach that the etch stop layer functions as a mask. Since no further argument has been made other than that which has already been overcome, as shown in the Notice of Allowance mailed May 3, 2004, Applicant respectfully submits that claim 29 is allowable.

**Allowable Subject Matter**

Applicant thanks the Examiner for the allowance of claim 67.

**CONCLUSION**

Applicant respectfully submits that the claims are allowable. They have been allowed previously over the exact art that is now cited again. No new arguments have been put forth in the Office Action, and previous Office Actions have admitted that the cited reference does not contain each and every element of claim 29. Therefore, for all of the reasons cited herein, and

**RESPONSE TO NON-FINAL OFFICE ACTION**

**PAGE 3**

Serial No. 09/652,999

Attorney Docket No. 400.153US03


Title: CONTAINER CAPACITOR STRUCTURE AND METHOD OF FORMATION THEREOF

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for the reasons cited in the responses to the five previous Office Actions, Applicant requests reconsideration of the rejection, and re-allowance of the claims. If the Examiner has any questions or concerns regarding this application, please contact the undersigned at (612) 312-2203.

Respectfully submitted,

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Daniel J. Polglaze  
Reg. No. 39,801

Attorneys for Applicant  
Leffert Jay & Polglaze  
P.O. Box 581009  
Minneapolis, MN 55458-1009  
T 612 312-2200  
F 612 312-2250